

2013 WL 1718650 (La.App. 3 Cir.) (Appellate Brief)  
Court of Appeal of Louisiana, Third Circuit.

Frances R. DETRAZ,  
v.  
BANC ONE SECURITIES CORP., et al.

No. 2013-CA-00191.  
April 12, 2013.

On Appeal from the Fifteenth Judicial District Court Parish of  
Lafayette State of Louisiana Honorable Glendon P. Everett, Judge  
Civil Docket Number C-2010-7723-F  
Civil Proceeding

**Original Brief On Behalf Defendant/Appellee J.P. Morgan Securities, LLC, Successor  
in Interest to Chase Investment Services Corp. and Banc One Securities Corp.**

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### \*1 STATEMENT OF THE CASE

Appellant's motion to vacate the arbitration award and subsequent appeal constitute a blatant attempt to retry the case she agreed to have decided by the FINRA arbitration panel. She asserts that, based on the facts as she presents them in her Appellate Brief, she should have prevailed on her FINRA claim. However, Appellant presented the same alleged "facts" at the arbitration hearing, which were disputed by Appellee, and the FINRA panel did not believe her. Therefore, the entire basis of her appeal is groundless.

Frances R. Detraz ("Detraz") originally brought this action in state court. Her complaint alleged losses incurred in her brokerage accounts at two separate brokerage firms while Eric S. LeBlanc ("Mr. LeBlanc") was her broker. The main thrust of Detraz's claim was that she spent her money too quickly on the advice of Mr. LeBlanc. After determining that she had signed mandatory arbitration agreements with the brokerage firms, she agreed to arbitrate her claims. Detraz and Banc One Securities Corp., n/k/a J.P. Morgan Securities, LLC ("JPMS"),<sup>1</sup> participated in an arbitration hearing before a panel of the Financial Industry Regulatory Authority ("FINRA") on May 15-17, 2012, under Arbitration Case No. 11-01606.

JPMS presented several defenses at the arbitration hearing, including that Detraz's allegations were false, that JPMS and Mr. LeBlanc acted appropriately and did not breach any duties owed to her, and that her claims were barred by the applicable prescriptions periods. The arbitration panel did not find Detraz credible, and found Detraz's claims regarding wrongful losses in her brokerage account **"factually impossible or clearly erroneous."** The panel \*2 therefore denied Claimant's claims against JPMS in their entirety, and held that JPMS "shall pay nothing to Claimant."

Appellant's assertion that *Beckstrom v. Parnell*, 730 So.2d 942 (La.App. 1 Cir. 1998), imposed a universal duty on brokers to present investment strategies in writing to **elderly** clients is incorrect. Rather, the *Beckstrom* court recognized the well-settled rule that the nature of a broker's duty to his customer is "necessarily particularly fact-based." *Id.* at 948 (quoting *Romano v. Merrill Lynch Pierce Fenner & Smith*, 843 F.2d 523, 530 (5th Cir. 1987)) (emphasis added). Therefore, it was up to the FINRA arbitration panel to determine the nature of the duty owed to Appellant by Mr. LeBlanc and JPMS based on the evidence presented to them. The duty of this Court is to determine whether there exists any ground to vacate the arbitration award under LSA R.S. 9:4210. Appellee submits that there does not.

### \*3 ACTION OF THE TRIAL COURT

This matter was heard on Detraz's Motion to Vacate and Remand the FINRA Arbitration Award, and JPMS's Motion to Confirm the FINRA Arbitration Award, before the Honorable Glendon P. Everett on October 22, 2012. (R. 48, 33). The central issue presented to the Court in the Motion to Vacate and Remand was whether, in finding that Detraz's claim was "factually impossible or clearly erroneous," the FINRA arbitration panel exceeded its powers or so imperfectly executed them that the award should be vacated.

The Court, after considering the pleadings, attachments, memoranda and arguments of counsel, held that the Motion to Confirm was well-founded and the Motion to Vacate and Remand was not well-founded. The Trial Court ordered that the FINRA arbitration award be confirmed, and denied the Motion to Vacate and Remand. (R. 129).

#### **\*4 ASSIGNMENT OF ERRORS**

I. THE TRIAL COURT WAS CORRECT IN DENYING THE MOTION TO VACATE AND REMAND, BECAUSE THERE IS NO GROUND FOR VACATING THE AWARD UNDER [LSA R.S. 9:4210](#).

#### **\*5 ISSUES PRESENTED FOR REVIEW**

##### **ISSUE NO. 1:**

CAN A STATE COURT, BASED ON A PARTY'S CLAIM THAT THERE WERE ERRORS OF LAW OR FACT IN AN ARBITRATION PROCEEDING, SUBSTITUTE ITS JUDGMENT FOR THE JUDGMENT OF THE ARBITRATION PANEL?

##### **ISSUE NO. 2:**

DOES AN ARBITRATION PANEL EXCEED ITS POWERS WHEN IT FAILS TO BELIEVE A CLAIMANT'S TESTIMONY AND FINDS THAT HER CLAIMS ARE FACTUALLY IMPOSSIBLE OR CLEARLY ERRONEOUS?

##### **ISSUE NO. 3:**

DOES LOUISIANA LAW REQUIRE A BROKER TO PRESENT HIS CUSTOMER WITH INVESTMENT STRATEGIES IN WRITING?

#### **\*6 LAW AND ARGUMENT**

**I. THE TRIAL COURT WAS CORRECT IN DENYING THE MOTION TO VACATE AND REMAND, BECAUSE THERE IS NO GROUND FOR VACATING THE AWARD UNDER [LSA R.S. 9:4210](#).**

##### **A. Standard for Vacating an Arbitration Award.**

An arbitration award may only be vacated on the grounds set forth in [LSA R.S. 9:4210](#). That statute provides:

**“[LSA R.S. 9:4210](#). Motion to vacate award; grounds; rehearing**

In any of the following cases the court in and for the parish wherein the award was made shall issue an order vacating the award upon the application of any party to the arbitration.

A. Where the award was procured by corruption, fraud, or undue means.

B. Where there was evident partiality or corruption on the part of the arbitrators or any of them.

C. Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient case shown, or in refusing to hear evidence pertinent and material to the controversy, or of any other misbehavior by which the rights of any party have been prejudiced.

D. Where the arbitrators exceeded their powers or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

Where an award is vacated and the time within which the disagreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.”

The arbitration award can only be challenged by the grounds set forth in LSA R.S. 9:4210. *National Bldg. And Contracting Co., Inc. v. Lafourche Parish Police Jury*, App. 1980, 381 So.2d 867, writ denied 385 So.2d 268; *Firmin v. Garber*, Sup. 1977, 353 So.2d 975. Unless grounds for vacating, modifying or correcting the arbitration award are established, the award must be confirmed. Moreover, *errors of law or fact are insufficient to invalidate an arbitration award*. \*7 *Pennington v. Cuna Brokerage Securities, Inc.*, App. 1 Cir. 2008, 5 So.3d 172, 2008-0589 (La.App. 1 Cir. 10/1/08), writ denied 998 So.2d 723, 2008-2600 (La. 1/9/09); *Montelepre v. Waring Architects*, App. 4 Cir. 2001, 787 So.2d 1127, 2000-0671, 2000-672 (La.App. 4 Cir. 5/112001).

Appellant has made no allegations of corruption, fraud or undue means exerted upon the panel of arbitration. Moreover, she has made no allegations regarding partiality or misconduct on the part of the panel. Rather Appellant has alleged that the FINRA panel “exceeded their powers or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.” LSA R.S. 9:4210(d). This allegation is made based upon an erroneous allegation that the panel ignored Louisiana law and a re-hashing of all of the arguments here which were already rejected by the arbitration panel.

## **B. Appellant's Burden in Seeking to Vacate the Arbitration Award.**

It was not the Trial Court's - nor is it this Court's - duty to re-visit the facts and circumstances of the case. A district court does not sit in an appellate capacity to an arbitration panel, but confines its determinations as to whether there exists one or more of the specific grounds for impeachment as provided under law. *NCO Portfolio Management, Inc. v. Walker*, App. 3 Cir. 2009, 3 So.3d 628, 2008-1011 (La.App. 3 Cir. 2/4/09); *Pennington v. Cuna Brokerage Securities, Inc.*, *supra*. The reviewing court may not substitute its own judgment for that of the arbitrator. *MMR-Radon Constructors, Inc. v. Continental Ins. Co.*, App. 1 Cir. 1998, 714 So.2d 1, 1997-0159 (La.App. 1 Cir. 3/3/98), rehearing denied, writ denied 721 So.2d 915, 1998-1485 (La. 9/4/98); *Hill v. Cloud*, App. 2 Cir. 1995, 648 So.2d 1383, 26, 391 (La.App. 2 Cir. 1/25/95), writ not considered 651 So.2d 260, 1995-0486 (La. 3/17/95).

\*8 The burden is upon Appellant to show the FINRA panel exceeded its powers, and the allegations simply do not meet that standard. The panel that heard this matter stated that they had read and considered the pleadings and other materials filed by the parties. They further considered the testimony presented at an in-person recorded hearing. The panel stated:

“The claims clearly are erroneous. The Panel believes that the broker dealt openly and honestly with Claimant, did not pursue an improper investment strategy, and did not have control of the account. Further, Claimant knew from the statements, confirms and conversations with the broker that the account could, and did, fluctuate. The Panel also finds the claim clearly erroneous to the extent that it was premised on a blind reliance on the broker's alleged (and denied) statements that Claimant would never outlive her principal. This was particularly so, in the fact of both substantial withdrawals and the above-mentioned market fluctuations.”

## **C. Appellant's Incorrect Assertions Regarding Beckstrom.**

Appellant asserts that the arbitration panel exceeded its powers by disregarding a purported Louisiana state law that requires a broker to present an **elderly** client, in writing, with a calculation and explanation of what would be occurring in her account before she invested. However, this allegation, based on dicta in the *Beckstrom* case, is erroneous; there simply is no such state law, statutory or otherwise, and *Beckstrom* has never been cited for that proposition i<sup>2</sup>

Indeed, the *Beckstrom* court recognized the well-established rule that the nature of a broker's duty to his customer “will vary, depending on the relationship between the broker and the investor. *Such determination is necessarily particularly fact-based.*” 730 So.2d at 948 (quoting *Romano v. Merrill Lynch Pierce Fenner & Smith*, 843 F.2d 523, 530 (5th Cir. 1987)) (emphasis added). In determining the broker's duty to the investor in *Beckstrom*, the court \*9 considered testimony that, among other things, the investor (Beckstrom) had a life-long drinking problem, was in a car accident that required an extensive recovery period, had begun neglecting his business, appeared to others to be incapable of taking care of his business affairs, broke his hip, was diagnosed with cancer, suffered a debilitating stroke, and urinated in public. *Id.* at 945, 950. Based on the extensive evidence that Beckstrom's “physical and mental capacity had deteriorated,” the court stated that “[a]lthough he account had been a non-discretionary one in the past, the nature of the investing relationship between Mr. Beckstrom and [his broker] changed at the point in time that this aging man indicated that he desired less control over the entirety of his investments.” *Id.* at 951.

In this case, on the other hand, the evidence introduced at the hearing clearly demonstrated - and the panel obviously believed - that Appellant is a capable individual who understood her investment strategy. Further, she did not present evidence that she has any of the impairments suffered by the investor in *Beckstrom*.<sup>3</sup> Contrary to Appellant's assertion that the testimony presented to the arbitration panel was “uncontested,” Mr. LeBlanc denied everything Appellant testified to regarding their dealings, including the allegation that he told her how much she could or should withdraw from her account. Appellant's Brief, p. 9. Mr. LeBlanc also testified that he fully disclosed the risks of the investments she chose. The panel obviously believed Mr. LeBlanc's testimony, and found that Detraz's claim was “clearly erroneous to the extent that it was premised on a blind reliance on the broker's alleged (and denied) statements that Claimant would never outlive her principal.” Moreover, the panel found that, unlike the broker in *Beckstrom*, Mr. LeBlanc “dealt openly and honestly with Claimant, *did not pursue an improper investment strategy, and did not have control of the account.*” \*10 (Emphasis added). Therefore, as JPMS argued to the arbitration panel during closing arguments, *Beckstrom* is distinguishable.<sup>4</sup>

#### D. Appellant's Misstatement Regarding the Arbitration Panel's Duty.

Appellant's assertion that the arbitrators were required to “address whether or not state law was satisfied” is false. Appellant's Brief, p. 9. FINRA arbitrations are governed by the FINRA Code of Arbitration Procedure. Appellant agreed to try her case in that forum, and as such to abide by the FINRA rules and the decision of the arbitrators. In addressing arbitration awards, FINRA Rule 12904 states that “the award may contain a rationale underlying the award.” FINRA Code of Arbitration Procedure for Customer Disputes Rule 12904(f) (emphasis added). Even where the parties request an explained decision - which the parties did not do here - the decision will only be a “fact-based award stating the general reason(s) for the arbitrator's decision. *Inclusion of legal authorities and damage calculations is not required.*” Rule 12904(g) (emphasis added). Thus, the panel had no obligation to address whether or not state law was satisfied in its award.

As set forth in the Statement of the Case, JPMS proffered several defenses to Detraz's claim at the hearing, and the panel could have denied her \*11 claim on any one of those grounds. Accordingly, there is no basis for the allegation that the panel disregarded Louisiana law.<sup>5</sup>

#### \*12 CONCLUSION

Appellant agreed to submit this matter to binding FINRA arbitration. Over the course of a three-day hearing, the arbitration panel considered all of the evidence before it, and found Appellant's allegations that she withdrew her money from her brokerage account at too rapid a pace at the advice of her broker were not worthy of belief. On the contrary, the panel found that Mr. LeBlanc's testimony was truthful, and therefore Appellant's claims were “factually impossible or clearly erroneous.” It was the Trial Court's duty simply to determine whether the hearing was fair and equitable within the meaning of LSA R.S. 9:4210. Appellant has not proven that there is any ground to vacate the award.

The judgment of the Trial Court should be affirmed.

Footnotes

- 1 On October 1, 2012, Chase Investment Services Corp. ("CISC"), successor in interest to Banc One Securities Corp., merged into JPMS. JPMS is the successor in interest to CISC and has assumed all of CISC's rights and obligations.
- 2 Likewise, while FINRA has promulgated extensive rules governing the conduct of brokers, there is no such industry rule or standard.
- 3 It is worth noting that Appellant was only 60 years old when she began investing with JPMS, and 67 when she closed her account.
- 4 Appellant's assertion that there was spoliation of evidence, such that she was entitled to an adverse inference, is a red herring. First, there was no requirement that Mr. LeBlanc present Detraz with a written explanation of her investment strategy before she invested. Second, the records issue was resolved in a prehearing motion and oral argument, and was argued again at the hearing. As JPMS explained to the arbitration panel, the vast majority of document regarding Detraz's account were well outside the records retention periods set forth by the Securities Exchange Commission, which governs broker-dealers. Detraz filed her claim over 11 years after she opened her account and almost six years after she closed it, which was well after the applicable prescriptions periods had expired. Nevertheless, JPMS conducted multiple searches for documents pertaining to Detraz's account, and produced over 3,800 pages discovery. While there were some documents that JPMS was unable to locate, that is common in cases where the claims are so old. The arbitration panel obviously found no wrongdoing on the part of JPMS, and appropriately denied Detraz's motion for an adverse inference.
- 5 Again, there is *no* Louisiana law requiring a broker to give written disclosures to an **elderly** customer.

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